UNITED STATES PATENT AND TRADEMARK OFFICE

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09/955,683	09/19/2001	Clint H. O'Conner	016295.0690	1165

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/955,683
Filing Date: 19 November 2001
Appellant(s): Clint H. O'Connor et al.

MAILED

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Technology Center 2100

Joseph P. Lally (Registration Number: 38,947
For Appellant

EXAMINER'S ANSWER

This examiner's answer is in response to the appellant's Appeal Brief filed 29 June 2006.

I. Real Party in Interest.

A statement identifying the real party in interest is contained in the brief and is acknowledged.

II. Related Appeals and Interferences.

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief and is acknowledged.

III. Status of Claims.

This is an Answer to an appeal from the final rejection of claims 1-25, which are all the claims in the case. Examiner agrees with the statement of the status of the claims contained in the appellant's brief.

IV. Status of Amendments After Final.

Examiner agrees with the statement of the status of amendments contained in the appellant's brief.

V. Summary of Claimed Subject Matter.

Examiner agrees with the summary of the invention contained in the appellant's brief.

VI. Grounds of Rejection to be Reviewed on Appeal.

Examiner agrees with the issues presented for review as contained in the appellant's brief. The only remaining rejection is upon claims 1-25 which stand rejected under 35 U.S.C. 102 (e) as being anticipated by Fung (US 6,859,882 B2).

VII. Claims Appendix.

Examiner agrees that the copy of the claims on appeal are correct.

VIII. Evidence Relied Upon.

Fung (US 6,859,882 B2) filed 18 May 2001

IX. Grounds of Rejection.

1. Claims 1-25 are rejected under 35 U.S.C. 102 (e) as being anticipated by Fung (US 6,859,882 B2).

2. Per claim 1, Fung taught *a computer system* (e.g., see figure 2 as an example) *comprising:*
a) *a plurality of processing resources* (the several Server Module 54 of figure 2 and also figure 9 per col. 6 (line 53) as examples) *operable to process data* (as implied by "CPU" of figure 2 and Abstract for example);
b) *a plurality of power supplies* (e.g., see figure 2 (56), related wires of "Backplane" and voltage generators (416-2) of figure 9 and/or voltage regulators of figure 11 (see way lower simi-right just off the backplane connector(s))) *associated with the processing resources, the power supplies operable to supply power to the processing resources* (e.g., see Abstract and col. 6 (line 55) as example(s)); *and*
c) *a power management engine* (e.g., see figure 12 (108a) as examples) *associated with the power supplies, the power management engine operable to adjust the power supplies to optimize power consumption* (e.g., see Title, Abstract, col. 4 (lines 26-44), col. 28 (fine 26-et seq.) and specifically col. 37 (lines 1-3) as examples)).

3. It is noted that "optimize" is not defined, but implemented with its plain meaning, in the specification and claims and thus given the broadest reasonable interpretation. That is, Fung adjusts power supply to the components by turn some off while others remain on or in a lower consumption Mode. If something is turned off since it is not needed, does such "optimize" the power? Also, it is noted that optimizing consumption encompasses optimizing conservation specifically since conservation is a subset of consumption. One cannot wisely save money when foolish with it; and, money forced into savings consumes such from free spending.

4. Per claims 2 and 3, such would be any storage of power usage information (i.e., which of the servers are on or off) for supply information or any storage of demands as covered in col. 8 (lines 38-49) and col. 11 (line 66-et seq.) as examples.

5. Per claims 4 and 5, see Abstract.

6. Per claim 6, see col. 29 (line 65) to col. 30 (line 11) "cycle" in col. 30 (line 1).

7. Per claim 7, no clear definition for "enterprise" was given in this application other then the general use of the word and thus Fung's system was an enterprise in the general term of the word such as Internet service companies or enterprise as covered in col. 3 (line 12-14).

8. Per claims 8 and 9, see col. 6 (lines 44-57).

9. Per claim 10, such would be that which controlled and managed the "workload", as covered in the Abstract for example, of the totality of the system covered by Fung.

10. Per claim 11, see col. 30 (lines 30-43).

11. Per claims 12-25, these claims do not teach or defined above the correspondingly rejected claims given above, and are thus rejected for the same reasons given above. However, as for predicting future demand requirements, see col. 32 (line 31) and col. 67 (line 62-et seq. (these are not claims for this applied reference which actually start in col. 98 (line 4))).

X. Response to Argument.

1. Per the appellant's arguments, directed to broadening rejection under 35 U.S.C. 102(e), being anticipated by Fung (US 6,859,882 B2), the applicant argued in substance that:

a) Fung does not disclose either expressly or inherently a power management engine operable to adjust power supplies to optimize power consumption. Appellants respectfully submit that Fung does not anticipate independent claim 1 because Fung does not disclose expressly or inherently all of the elements of claim 1. Claim 1 recites a computer system that includes, among other elements, a power management engine operable to adjust power supplies to optimize power consumption. As Appellants have previously argued to the Examiner, Fung fails to disclose either expressly or inherently a power management engine operable to adjust power supplies to optimize power consumption. *However*, as indicated above, Fung disclosed a power management engine operable to adjust power supplies to optimize power conservation which was a subset of power consumption as indicated above. One is not able to optimize power conservation without first taking into consideration power consumption. Since Fung (col. 37 (lines 1-3) as an example) clearly disclosed optimizing power conservation, then, in order to conserve power, the consumption of such power must first be prudently and wisely consumed. See also, see Title, Abstract, col. 4 (lines 26-44), col. 28 (fine 26-et seq.) in conjunction with "adjust power supply" and col. 37 (lines 1-3) in that the adjusting in an optimizing manner. Finally, as indicated above, Fung clearly taught removing power from unused components thus optimizing the power consumed;

b) the Appellants submit that a description of optimization and power conservation by managing server modules does not anticipate a management engine operable to adjust power supplies. There is no express reference to adjusting power supplies and, with respect to inherency, servers may be managed to optimize power conservation and performance in ways not involving adjusting power supplies (e.g., controlling the frequency or clock speed of a microprocessor). The cited paragraph simply provides no express or inherent disclosure of an engine operable to adjust power supplies to optimize power consumption. *However*, as indicated above, a description of optimization and power conservation by managing server modules does teach, and thus, anticipate a management engine operable to adjust power supplies since the systems cycles between multiple "Mode"s as covered in col. 34 (line 56-et

seq) to adjust the power the system "consumes" as also covered in col. 36 (lines 33-46) specifically col. 36 (line 56 "power consumption");

c) Fung does not disclose either expressly or inherently adjusting the number of operating power supplies following receipt of a demand requirement. *However*, as indicated above, and more so in col. 36 (lines 33-46), Fung taught adjusting the number of operating power supplies following receipt of a demand requirement among other things also such as time of day, server loads, exc;

d) Fung does not disclose either expressly or inherently adjusting power supplies in advance to meet future (predicted) demand requirements. *However*, being with col. 67 (line 64), Fung taught adjusting power supplies in advance to meet future (*predicted*) demand requirements and thus Fung predicted future demand requirements and adjusting the power supplies in advance.
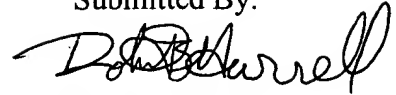
2. For all or the reasons set forth supra, it is respectfully requested that the rejections as presented be sustained.

XI. Related Proceeding Appendix.

NONE

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